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IN THE
COURT OF APPEALS OF INDIANA

DENNIS HOFFMAN, MERLE HOFFMAN, ERIC HARVEY, and ANGELA HARVEY,	)	
Appellants-Plaintiffs,	)	
vs.	)	No. 54A01-0705-CV-213
WCC EQUITY PARTNERS, L.P., EATON EXCAVATING, INC. a/k/a EATON EXCAVATING, and BENCHMARK CONSULTING, INC.,	)	
Appellees-Defendants.	)	

APPEAL FROM THE MONTGOMERY CIRCUIT COURT
The Honorable Thomas K. Milligan, Judge
Cause No. 54C01-0608-PL-341

November 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

STATEMENT OF THE CASE

Dennis Hoffman, Merle Hoffman, Eric Harvey, and Angela Harvey (collectively "the Neighbors"), appeal from the trial court's grant of summary judgment in favor of Benchmark Consulting, Inc. ("Benchmark") and Eaton Excavating, Inc. ("Eaton") on the Neighbors' first amended complaint alleging negligence and negligent infliction of emotional distress. On appeal we address a single dispositive issue, namely, whether the Neighbors properly designated evidence creating an issue of fact to preclude the grant of summary judgment.

We affirm.

FACTS AND PROCEDURAL HISTORY

The Neighbors reside on the north side of 21st Street in Avon. WCC Equity Partners, L.P. ("WCC") is the owner and developer of Woodcreek Crossing ("Woodcreek"), a residential neighborhood under construction since 2001 on property adjacent to and north of the parcels on which the Neighbors reside. The Neighbors allege that WCC's development of Woodcreek has caused flooding of the Neighbors' yards and homes. On July 3, 2006, the Neighbors filed their first amended complaint against WCC, Eaton, Benchmark, Hendricks County Planning and Building, the Hendricks County Surveyor's Office, the Indianapolis Water Company, and the West Central Conservancy District.[1] In that complaint, the Neighbors sought injunctive relief and damages arising from flooding allegedly caused by the development at Woodcreek.

[1] The Neighbors appeal only the order granting summary judgment in favor of Eaton and Benchmark. Thus, only the Neighbors, Eaton, and Benchmark are parties to this appeal.

On July 26, 2006, Eaton filed its motion for summary judgment and a brief in support of that motion. On August 30, 2006, Benchmark filed its motion for summary judgment, motion to join in Eaton's motion for summary judgment, and designation of evidence. On October 2, 2006, the Neighbors served on Eaton and Benchmark their response to Eaton's and Benchmark's summary judgment motions, designation of evidence in opposition to summary judgment, and request for summary judgment.[2] The Neighbors also filed a motion to present video tape and live testimony at the summary judgment hearing. On October 6, Eaton and Benchmark filed a joint motion to strike the Neighbors' designations of evidence in opposition to their summary judgment motions, and they filed respective responses to the Neighbors' request for summary judgment.[3]

The trial court held a hearing on Eaton's and Benchmark's summary judgment motions in October. At that hearing, the trial court granted the motion to strike the Neighbors' designated evidence with respect to the video[4] and took the summary judgment motions under advisement. In December 2006, the trial court held a hearing on the Neighbors' summary judgment motion. And on January 30, 2007, the trial court

[2] The Neighbors' motion was titled "Response, Motions, Designations, of Plaintiffs to the Summary Judgment Motions of Eaton Excavating, Benchmark Consulting." Appellant's App. at 207. The pleading included in the appendix is not file stamped, nor is this pleading listed by that title in the Appendix. Thus, the filing date referred to in this opinion is the date on the certificate of service.

[3] The Neighbors also filed a motion objecting to Benchmark's and Eaton's designated evidence, but a copy of that motion is not included in the Appendix.

[4] We found the court's ruling on the motion to strike in the transcript of the summary judgment hearing. We thank the court reporter, Jill A. Froedge, for her detailed table of contents, which aided our review.

granted summary judgment in favor of Eaton and Benchmark and denied the Neighbors' request for summary judgment.[5]

The trial court entered final judgment as to Benchmark on February 7, 2007, and as to Eaton on March 6, 2007. The Neighbors filed motions to correct error regarding the grant of summary judgment in favor of Benchmark and Eaton. The trial court denied the Neighbors' motions, and the Neighbors now appeal.

DISCUSSION AND DECISION

When reviewing the propriety of a ruling on a motion for summary judgment, this court applies the same standard as the trial court. Sees v. Bank One, Ind., N.A., 839 N.E.2d 154, 160 (Ind. 2005). A party seeking summary judgment must show "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Id. (quoting Ind. Trial Rule 56(C)). The review of a summary judgment motion is limited to those materials designated to the trial court. Id.; see T.R. 56(H). A trial court's grant of summary judgment is "clothed with a presumption of validity," Rosi v. Bus. Furniture Corp., 615 N.E.2d 431, 434 (Ind. 1993), and we will affirm the trial court's grant of summary judgment on any theory or basis found in the record, Rodriguez v. Tech Credit Union Corp., 824 N.E.2d 442, 446 (Ind. Ct. App. 2005).

[5] We respectfully remind the Neighbors' counsel that a copy of the order appealed from should have been attached to the appellate brief. See Ind. Appellate Rule 46(A)(10). We also note that the Neighbors' brief was difficult to comprehend. We remind the Neighbors' counsel that supporting law should be cited according to the Bluebook, not only as to citation format but also as to the general usage of citations and explanatory parentheticals, see App. Rule 22, and that the contents of the appellant's brief must comply with Indiana Appellate Rule 46(A).

The Neighbors contend that summary judgment was improper because genuine issues of material fact exist. But, as noted above, our review is limited to those materials that were designated to the trial court. T.R. 56(H); Sees, 839 N.E.2d at 160. Our review of the record shows that the Neighbors did not properly designate evidence in opposition to Eaton's and Benchmark's motions for summary judgment. Thus, we consider whether the trial rules permit review of the Neighbors' claims on appeal.

A party filing a motion for summary judgment must "designate to the court all parts of pleadings, depositions, answers to interrogatories, admissions, matters of judicial notice, and any other matters on which it relies for purposes of the motion." T.R. 56(C). Indiana courts have held that, since the 1991 amendments to Rule 56, a party must designate the specific portions of the record upon which it relies in order to prevail: "No longer can parties rely without specificity on the entire assembled record—depositions, answers to interrogatories, and admissions—to fend off or support motions for summary judgment. It is not within a trial court's duties to search the record to construct a claim or defense for a party." Rosi, 615 N.E.2d at 434.

Here, the Neighbors' designation of evidence in opposition to summary judgment lists: affidavits, pleadings, and discovery, specifying the particular parts of each relied on; the Hendricks County Soil, Erosion and Drainage Control Ordinance and "the Indiana Code with case law, to the extent it regulates and controls drainage[,]" Appellant's App. at 217, without reference to particular sections or provisions; a video (later struck); photographs; and a map. But the part of the Neighbors' motion that addresses their

opposition to summary judgment, discussing the law and questions of fact, contains no references to the designated evidence.

As noted above, Trial Rule 56(C) requires parties to designate with specificity the evidence relied on in opposition to a summary judgment motion. But Rule 56(C) also requires the party opposing summary judgment to identify with the same specificity which evidence supports the particular contentions forwarded in opposition to summary judgment. See T.R. 56(C) ("A party opposing the [summary judgment] motion shall also designate to the court each material issue of fact which that party asserts precludes entry of summary judgment and the evidence relevant thereto.") (emphasis added). The Neighbors provided the trial court with a list of designated evidence but did not reference in their motion or argument what evidence supported each of their contentions. Such designations do not comply with Trial Rule 56(C). Thus, we conclude that the Neighbors' designation of evidence to the trial court is insufficient as a matter of law.

We acknowledge that the trial court reviewed the evidence and entered a summary judgment order with findings of fact and conclusions despite the deficiency in the Neighbors' designations. However, the trial court was not obliged to scour the evidence designated and the Neighbors' arguments to the trial court to discern what evidence was relevant to each contention advanced in opposition to summary judgment. See Rosi, 615 N.E.2d at 434. And while the Neighbors referenced the referred to specific parts of the designated evidence in support of their arguments on appeal, we are limited in our review to the material that was designated to the trial court. T.R. 56(H). Because the Neighbors did not provide the trial court with properly designated evidence supporting arguments in

opposition to summary judgment, we cannot review the grant of summary judgment in favor of Benchmark and Eaton.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.